



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Scott B. Mackenzie, Treasurer  
Honeycutt for Congress  
1155 15<sup>th</sup> Street, NW, Suite 410  
Washington, DC 20005

AUG 9 2010

RE: MUR 6138

Dear Mr. Mackenzie:

On December 8, 2008, the Federal Election Commission notified Honeycutt for Congress ("Committee") and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information provided by you, the Commission, on May 25, 2010, found that there is reason to believe that the Committee and you, as treasurer, violated 2 U.S.C. § 434(b) and knowingly and willfully violated 2 U.S.C. § 441d(a), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information. Also on May 25, 2010, the Commission was equally divided on whether to find reason to believe that the Committee and you, as treasurer, violated 2 U.S.C. § 441h(a). Accordingly, the Commission closed this portion of the file. A Statement of Reasons explaining the Commission's decision will follow.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Shana Broussard, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,

  
Cynthia L. Bauerly  
Vice Chair

Enclosures

Factual and Legal Analysis

cc: candidate

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**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Honeycutt for Congress                      **MUR 6138**  
and Scott Mackenzie, in his official capacity  
as treasurer

**I.     GENERATION OF MATTER**

This matter was generated by a Complaint filed with the Federal Election Commission ("the Commission") by David Scott for Congress through its campaign manager Kwame Vidal. *See* 2 U.S.C. § 437g(a)(1).

**II.    INTRODUCTION**

The Complaint alleges that Honeycutt for Congress and Scott Mackenzie, in his official capacity as treasurer ("HFC") violated the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with communications critical of Honeycutt's opponent, U.S. Representative David Scott. First, the Complaint alleges that the communication titled "Corrupt" included a disclaimer stating that it was paid for by DemocratsforGoodGovernment.com, even though an invoice and HFC disclosure report indicate that HFC in fact paid for it. *See* Complaint Exhibit B. Next, the Complaint alleges that HFC did not timely disclose its payment for the "Corrupt" communication. Finally, the Complaint alleges that HFC fraudulently misrepresented itself as speaking on behalf of the Democratic Party because the "Corrupt" communication included a depiction of the Democratic Party donkey logo. *See id.*

In its Response, HFC acknowledges that the Committee made a disbursement on August 29, 2008, in the amount of \$1,385.75 to 48HourPrint.com. HFC also forwarded a page from its amended 2008 October Quarterly Report that disclosed this disbursement.

1 The timing and amount of HFC's payment corresponds to an invoice for the "Corrupt"  
2 communication included with the Complaint. *See* Complaint Exhibit A and HFC  
3 amended 2008 October Quarterly Report pp. 1200. HFC did not otherwise address the  
4 "Corrupt" communication.

5 As set forth below, the Commission finds reason to believe that Honeycutt for  
6 Congress and Scott Mackenzie, in his official capacity as treasurer, knowingly and  
7 willfully violated 2 U.S.C. § 441d(a) because it appears that it authorized and paid for a  
8 communication that identified another entity paid for it. In addition, because HFC did  
9 not disclose the disbursement for the "Corrupt" communication on its initial 2008  
10 October Quarterly Report, the Commission finds reason to believe that Honeycutt for  
11 Congress and Scott Mackenzie, in his official capacity as treasurer, violated 2 U.S.C.  
12 § 434(b). The Commission finds no reason to believe the allegation that Honeycutt for  
13 Congress and Scott Mackenzie, in his official capacity as treasurer, fraudulently  
14 misrepresented themselves as acting on behalf of the Democratic Party. *See*  
15 2 U.S.C. § 441h(a).

16 **III. FACTUAL AND LEGAL ANALYSIS**

17 **A. Factual Background**

18 In the 2008 general election, Deborah T. Honeycutt was the Republican candidate  
19 for Congress opposing the Democratic incumbent, Rep. David Scott, in the 13<sup>th</sup>  
20 Congressional District of Georgia. HFC is the principal campaign committee for  
21 Deborah T. Honeycutt, and her spouse, Andrew Honeycutt, is the Committee's campaign  
22 chairman. *See* Response.

**1. Democrats for Good Government and David Knox**

DGG is an organization created by David Knox.

See <http://www.democratsforgoodgovernment.com>. DGG is not registered as a political committee with the Commission or the Georgia State Ethics Commission, and is not registered with the IRS as a section 527 organization. According to DGG's website, it is "[t]he place to get the facts about Democrats who are really doing the work for Democrats." See *id.* However, the entire content of the website appears to focus on material opposing a single candidate, Rep. Scott, including portions of local newspaper articles that are highly critical of Rep. Scott. See *id.*

Knox is also the owner and operator of DK Intermedia, a website development company. Both Knox and DK Intermedia were vendors to HFC for Deborah T. Honeycutt's 2006 and 2008 congressional campaigns; Honeycutt faced Rep. Scott in both general elections. The DK Intermedia website indicates it created an "informational site" for Honeycutt's 2006 congressional campaign.<sup>1</sup> According to HFC's disclosure reports, the Committee disbursed \$250 to David Knox on February 28 and on March 13, 2006 for "website and photos," \$750 and \$350 on May 9 and July 7, 2006, respectively, for "consulting-graphics/website maintenance," and \$350 and \$250 on July 31, 2006 and February 6, 2007, respectively, for "consulting-graphics/website." HFC disbursed \$525 to DK Intermedia on May 7, 2008 for internet consulting.

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<sup>1</sup> The website states that "this site is no longer a part of this portfolio. There is no support for this candidate [sic]." [Emphasis in original]. [http://www.dkextra.com/portfolio/web\\_port.htm](http://www.dkextra.com/portfolio/web_port.htm)

1 The website for Democrats for Good Government contains a link to  
2 www.voteoutdavidscott.com.<sup>2</sup> The site begins with a heading "Georgia's Congressional  
3 13<sup>th</sup> District Corrupt Congre\$\$man," and continues with a cartoon figure identified as  
4 Rep. Scott sitting at a desk surrounded by individuals identified as "Lobbyist" and piles  
5 of cash with the U.S. Capitol in the background. The website directs the viewer to  
6 "Check Him Out and Vote Him Out!!!" Several pages into the website is the cartoon  
7 depiction of Scott sitting on a mound of cash as included on the "Corrupt"  
8 communication. The website concludes, "No Disclaimer Necessary – We only work for  
9 the government part-time (ourselves the rest of the time.) Sponsored by Democrats for  
10 Good Government!"

## 11 2. "Corrupt" Communication

12 A copy of the "Corrupt" communication at issue is included with the Complaint  
13 as Exhibit B. One side of the communication begins with the heading "**CORRUPT**  
14 **DAVID SCOTT**," followed by a picture of Rep. Scott and the statement "David Scott is  
15 **CORRUPT!!!**" The communication then refers the reader to  
16 www.voteoutdavidscott.com. The communication also contains a depiction of the  
17 Democratic Party donkey logo and the tagline, "Your Vote Counts for Change!" The  
18 other side of the communication refers to Scott as "The Worst Black Congressperson,"  
19 and includes a cartoon depiction of Rep. Scott sitting on a mound of cash with the U.S.  
20 Capitol in the background. Both sides of the communication contain a disclaimer stating  
21 that it was paid for by "DemocratsForGoodGovernment.com." See Complaint Exhibit B.

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<sup>2</sup> The website link, www.voteoutdavidscott.com is now closed; however, the website can be accessed through the Democrats for Good Government website found at http://www.democratsforgoodgovernment.com/voteoutdavidscott.com.

Neither the Complaint nor HFC's Response provides information regarding the distribution of this communication.

The Complaint also provided an invoice dated August 26, 2008 from 48HourPrint.com in the amount of \$1,385.75 for 25,000 double-sided "3.5 x 8.5 Rack Cards -- Corrupt." Complaint Exhibit A. The invoice was billed to "Andrew" at 160 Deer Forest Trail, Fayetteville, Georgia, and includes a "blind shipping address" for "David" at 2326 Nicole Drive, Hampton, Georgia. The invoice "Ship to" addressee is David Knox at an address in Jonesboro, Georgia. Public records indicate that Deborah and Andrew Honeycutt are the owners of the Fayetteville address. HFC disclosed a \$1,385.75 payment to 48 Hour Print on August 29, 2008 for "Printing" that corresponds to the invoice.

**B. Legal Analysis**

**1. "Corrupt" Communication Disclaimer**

The Complaint alleges that the "Corrupt" communication did not include the required disclaimer. A political committee that makes a disbursement to finance a public communication must include a disclaimer. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1). Disclaimers are also required for public communications financed by any person that expressly advocate the election or defeat of a clearly identified candidate. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(2). The term "public communication" includes "mass mailings" and "any other general public political advertising." 2 U.S.C. § 431(22); 11 C.F.R. § 100.26. Mass mailing is defined as a mailing by U.S. mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. 2 U.S.C. § 431(23); 11 C.F.R. § 100.27. The Commission has

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1 determined that campaign literature "distributed to the general public at their place of  
2 residence...constitutes general public political advertising." *See* MUR 4741 (Mary Bono  
3 Committee) Factual and Legal Analysis (finding reason to believe that the Committee  
4 violated 2 U.S.C. § 441d(a) by failing to include a disclaimer on campaign material left  
5 on doorknobs of residences).

6       The disclaimer for a communication that is paid for and authorized by a  
7 candidate, an authorized committee of a candidate, or its agents, shall clearly state that  
8 the communication has been paid for by such authorized committee. 2 U.S.C.  
9 § 441d(a)(1). The disclaimer for a communication not authorized by the candidate shall  
10 clearly state the name and permanent street address, telephone number or World Wide  
11 Web address of the person who paid for the communication and state that the  
12 communication is not authorized by any candidate or candidate's committee. 2 U.S.C.  
13 § 441d(a)(3). The Commission now addresses the communication in question.

14       The Complaint alleges that HFC violated the Act's disclaimer provisions when it  
15 paid for a communication, "Corrupt," that failed to state that the Committee paid for it.  
16 The available information, including the Committee's Response and amended 2008  
17 October Quarterly Report, and the invoice, *see* Complaint Exhibit A, indicates that HFC  
18 in fact paid \$1,385.75 for 25,000 "Corrupt" "rack cards" on August 29, 2008. However,  
19 neither the "Corrupt" communication itself, the Complaint, Response, nor other available  
20 information indicates how the communication was disseminated. The Committee's  
21 amended October Quarterly Report includes disbursements on September 5, 2008 to  
22 Donald W. Allen II, in the amount of \$1,000.00 for consulting/canvassing and on  
23 September 25, 2008 to Dan P. Young, in the amount of \$4,000 for consulting/canvassing,

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1 which may be related to the dissemination of "Corrupt." If the communication qualifies  
2 as a public communication, i.e., if it was mass mailed, *see* 11 C.F.R. § 100.27, or  
3 otherwise qualifies as general public political advertising, the communication would need  
4 to contain a disclaimer stating that HFC paid for and authorized the communication. *See*  
5 2 U.S.C. § 441d(a)(1). Because the communication did not include such a disclaimer,  
6 HFC may have violated 2 U.S.C. § 441d(a).

7 The available information further suggests that such a violation may have been  
8 knowing and willful. The phrase knowing and willful indicates that "actions [were] taken  
9 with full knowledge of all of the facts and recognition that the action is prohibited by  
10 law." 122 Cong. Rec. H 3778 (daily ed. May 3, 1976); *see also* *AFL-CIO v. FEC*, 628  
11 F.2d 97-98, 101-02 (D.C. Cir.), *cert. denied*, 449 U.S. 982 (1980) (noting that a "willful"  
12 violation includes "such reckless disregard of the consequences as to be equivalent to a  
13 knowing, conscious, and deliberate flaunting of the Act," but concluding on the facts  
14 before it that this standard was not met); *National Right to Work Comm. v. FEC*, 716 F.2d  
15 1401, 1403 (D.C. Cir. 1983) (same). The available information indicates that the  
16 Committee, through its agent Andrew Honeycutt, ordered the "Corrupt" communication,  
17 and as indicated by the 48HourPrint.com invoice, provided the personal address of the  
18 candidate and campaign chairman as the billing address. However, "Corrupt" includes a  
19 disclaimer, "Paid for by DemocratsforGoodGovernment.com," and contains the same  
20 headline, "The Worst Black Congressperson," and cartoon depiction of Rep. Scott as  
21 included on the DGG website.

22 HFC's apparent efforts to try to hide its involvement with the "Corrupt"  
23 communication so that any recipients would not know that Andrew Honeycutt or the

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1 Committee authorized and paid for "Corrupt" further supports a recommendation that  
2 HFC and Andrew Honeycutt knowingly and willfully violated the Act. HFC's Response  
3 does not address any relationship with DGG or David Knox; however, the available  
4 information indicates an ongoing relationship between HFC and David Knox. *See supra*  
5 pp. 3 ln. 10-19. In addition, the invoice at Complaint Exhibit A further supports this  
6 ongoing relationship because it lists the name "Andrew" and the billing address for the  
7 candidate and her spouse and campaign chairman, Andrew Honeycutt, as well as the  
8 name "David." *See supra* pp. 5 ln. 3-11. By paying for a communication with a  
9 disclaimer stating that a third-party organization paid for it, HFC attempted to conceal its  
10 identity as the person that authorized and paid for the 25,000 rack cards. HFC attempted  
11 to avoid any explicit connection between the "Corrupt" communication and the  
12 Honeycutt campaign by stating that DGG paid for the "Corrupt" communication.<sup>3</sup> Thus,  
13 Respondents appear to have knowingly and willfully violated the Act. Accordingly, the  
14 Commission finds reason to believe that Honeycutt for Congress and Scott Mackenzie, in  
15 his official capacity as treasurer, knowingly and willfully violated 2 U.S.C. § 441d(a).

16 **2. Disclosure of Payment for "Corrupt" Communication**

17 HFC's disclosure reports must disclose all disbursements. *See* 2 U.S.C.  
18 § 434(b)(4). HFC did not disclose the \$1,385.75 disbursement to 48HourPrint.com for  
19 the "Corrupt" communication in its initial October Quarterly Report filed on October 15,  
20 2008. The Complaint was initially filed on October 21, 2008, but was returned to the

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<sup>3</sup> The candidate, political committee, and professional treasurer were experienced. Honeycutt was a candidate in 2006 as well as 2008 and HFC's treasurer, Scott Mackenzie, is an "FEC Compliance Officer" with BMW Direct, a Washington, D.C. political consulting firm. HFC's disclosure reports indicated total activity in amounts exceeding \$1.1 million and \$4.7 million for the 2006 and 2008 election cycles, respectively.

1 Complainant to correct a form defect; the Complaint was properly submitted on  
2 November 26, 2008. On October 22, 2008, the Committee filed an amended quarterly  
3 report that disclosed the \$1,385.75 disbursement.<sup>4</sup> See 2 U.S.C. § 434(b). HFC thus  
4 amended the report after the Complainant filed the Complaint. Because the disbursement  
5 was not disclosed on HFC's original October Quarterly Report, the Commission finds  
6 reason to believe that Honeycutt for Congress and Scott Mackenzic, in his official  
7 capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to timely disclose the  
8 disbursement.

### 9 3. Alleged Fraudulent Misrepresentation

10 Finally, the Complaint alleges that, by including a depiction of a logo similar to  
11 the logo of the Democratic Party on "Corrupt," Andrew Honeycutt, acting on behalf of  
12 HFC fraudulently misrepresented that the mailer was disseminated by the Democratic  
13 Party. Complaint at 5. The Act prohibits federal candidates and their employees or  
14 agents from fraudulently misrepresenting themselves, or any organization under their  
15 control, as speaking or otherwise acting on behalf of any other candidate or political party  
16 on a matter which is damaging to such other candidate or party. 2 U.S.C. § 441h(a).<sup>5</sup> In  
17 past enforcement matters dealing with fraudulent misrepresentation allegations, the  
18 Commission has focused its analysis on whether the Respondent was acting like the  
19 "official" party organization. See MUR 4919 (Charles Ball for Congress); see also MUR  
20 5444 (National Democratic Campaign Comm.). In MUR 4919 (Ball), the Commission  
21 found reason to believe that the Committee, Campaign Manager, and Finance Director

<sup>4</sup> The original October Quarterly Report was 47 pages. The amended report was 1275 pages.

<sup>5</sup> Section 441h(b) prohibits the fraudulent solicitation of funds, which seems to be further afield here where the available information does not indicate that DGG used the logo in connection with soliciting funds.

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1 knowingly and willfully violated 2 U.S.C. § 441h, and that the Committee treasurer  
2 violated 2 U.S.C. § 441h, when Respondents, on behalf of the Republican candidate in  
3 the California's 10<sup>th</sup> Congressional district, disseminated a communication within days of  
4 the general election to Democratic voters in the district that was purportedly prepared by  
5 a fictitious local party committee, the East Bay Democratic Committee, and signed by a  
6 Democratic Congressman of a neighboring district that expressly advocated the defeat of  
7 the Democratic incumbent. The communication's text suggested that committee was a  
8 legitimate organization within the Democratic Party by including language such as  
9 "Representing all Democrats in the East Bay." The communication urged the defeat of  
10 the incumbent but did not include a disclaimer identifying who paid for it or whether it  
11 was authorized by any candidate or committee.<sup>6</sup>

12 Unlike the communication in MUR 4919, in the instant matter, the "Corrupt"  
13 communication cannot be construed as an instrument of an "official organization" within  
14 the Democratic Party. Neither the complete name of the organization "Democrats for  
15 Good Government" nor the use of the word "Democrat" is sufficient to conclude that  
16 Respondents attempted to damage the Democratic Party. *See* 2 U.S.C. § 441h(a).  
17 "Corrupt" does not contain text designed to make the communication appear that the  
18 source of this communication was the Democratic Party. *See* Complaint Exhibit B.  
19 Although Deborah T. Honeycutt was the Republican nominee in the 2008 general  
20 election against Rep. Scott, the presence of the donkey logo on the "Corrupt"  
21 communication does not rise to the level of a violation of section 441h(a). The donkey  
22 logo, which is a generic symbol of the Democratic Party, is minimally displayed on the

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<sup>6</sup> After an investigation, the Commission found probable cause to believe as to Charles Ball for Congress, its treasurer and its campaign manager and conciliated with these respondents.

- 1 bottom left portion of the "Corrupt" communication that expressly advocates the defeat
- 2 of Rep. Scott. See Complaint Exhibit B. The available information does not suggest that
- 3 DGG represents itself as an arm of the official Democratic Party structure, such as a
- 4 district or local party committee as defined at 11 C.F.R. § 100.14(b). Accordingly, the
- 5 Commission finds no reason to believe that Honeycutt for Congress and Scott
- 6 Mackenzie, in his official capacity as treasurer, violated 2 U.S.C. § 441h(a).

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